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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,215	05/31/2006	David Magda Eddy Cortnen	PPI-14102/08	7008
57449 7590 01/21/2009 SHEEHAN PHINNEY BASS & GREEN, PA c/o PETER NIEVES 1000 ELM STREET MANCHESTER, NH 03105-3701				
EXAMINER				
MCALISTER, WILLIAM M				
ART UNIT		PAPER NUMBER		
3753				
MAIL DATE		DELIVERY MODE		
01/21/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/576,215

**Applicant(s)**

CORTNEN, DAVID MAGDA EDDY

**Examiner**

WILLIAM MCCALISTER

**Art Unit**

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 4/17/2006 (application).  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-22 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 17 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date 7/19/2006  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-10 and 12-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Hollenstein (US 4,444,219).

Hollenstein discloses a valve assembly for venting gases from within an enclosed foodstuffs package which includes a tubular body (2) having an open end (top, as seen in FIG 4) and a closed end (bottom) defining apertures (4), wherein the tubular body (2) defines a recess (10) between the open and closed ends; a retainer (9) that is snap fit into the recess (10) by way of a rim (12); wherein the retainer is spaced from the closed end of the body. Hollenstein also discloses a membrane element (8) made of polypropylene "so as to not permanently deform" when heated, which is retained by the retainer (9) within the recess (10) between the retainer (9) and the apertures (4), and is displaced to vent gases from within the container. The claim's statement "for venting pressurized gases ... during a heating of the package" is a statement of intended use bearing no patentable weight. The method of manufacturing the membrane element

(i.e. - that it is "cast", line 15) carries no patentable weight. All other claim limitations are considered clearly met.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 11 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollenstein.

Hollenstein discloses the invention as claimed with exception to the specific dimensions of the apertures and the operating pressure range of the valve. The use of such dimensions and effective operating pressures are mere design expedients that would have been obvious to employ where specific operating circumstances and/or environments dictate as much.

6. Claims 1-22 are alternatively rejected under 35 U.S.C. 103(a) as being unpatentable over Hollenstein in view of Goglio (US 3,949,934).

Should it be determined that the functional recitation "during heating of the package" found in the claim introduction is entitled to patentable weight, it would have been obvious to one of ordinary skill in the art at the time of invention to use Hollenstein's valve in such a manner, since Goglio teaches that it was known in the art at the time of invention to use such a valve (element 7, FIG 1) for the purpose of venting gases from such a container upon heating the container. Regarding claims 11 and 22, see the analysis set forth under paragraph 5 above.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM MCCALISTER whose telephone number is (571)270-1869. The examiner can normally be reached on Monday through Friday, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/WILLIAM MCCALISTER/  
Examiner, Art Unit 3753

/John Rivell/  
Primary Examiner, Art Unit 3753

WM  
1/7/2009